APPENDIX I

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil Action No. 1821

MEADOW CREEK COAL COMPANY, *Plaintiff*

v.

UNITED MINE WORKERS OF AMERICA, *Defendant*

Findings and Conclusions

The above entitled action came on for trial before the Court, without a jury, and the Court having been duly advised in the premises, now makes and files its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. That the plaintiff, Meadow Creek Coal Company, is a Tennessee Corporation, organized in 1935. It leases coal properties in Putnam County, Tennessee, within the geographical jurisdiction of this Court, and was actively engaged in mining and marketing coal in interstate commerce from its organization until January 1957, except for the period hereinafter mentioned.

There had been no labor troubles prior to January 12, 1948, on which date there were 169 men actively working in the mine.

2. The defendant, United Mine Workers of America, is an unincorporated labor organization. It is an international union with a membership of over three hundred thousand. It functions under a written Constitution and maintains headquarters in Washington, D. C., with district and local offices in all of the States and in Canada. It owns the building housing its principal offices in Washington, D. C., and owns other real estate and personal property. Its officers are a president, a vice-president and a secretary-treasurer. Its affairs are under the control of these officers and the International Board whose members are elected from the various districts in the United

States. It collects dues from its members at the rate of $4.25 a month, all of which is remitted to the Washington office, $2.25 of which collection is retained at the main offices in Washington, and $2.00 is returned to the district from which the collection is made, and this is divided between the districts and the members local. It has a perpetual existence, the right under various statutes to sue and be sued in its own name, it has a seal, the right to adopt by-laws, and the right to appoint and employ representatives, agents and other employees, the right to fix the compensation of the officers and other employees, the right to borrow and lend money, the right to own and maintain property, real and personal, the right to erect buildings and make improvements, the right to publish a newspaper of international circulation which it does do in the City of Washington. Generally, its members have no individual liability for the debts or obligations of the organization.

3. In 1944, two International Representatives of defendant called upon and informed Mr. W. T. Ray, president of plaintiff, that defendant represented a majority of plaintiff's employees, and that it wanted to negotiate a labor contract with the plaintiff. Mr. Ray did not believe that defendant represented a majority of his company's employees, and, therefore, a consent election was held under the supervision of the National Labor Relations Board, with the result that less than one-third of the legal votes cast were in favor of the defendant.

4. In the fall of 1946, defendant sent J. W. Ridings, a member of the International Board, L. H. Bell, an International Representative, Hugh Brown, an International Representative, and Ernest (Spooner) Stultz, an International Representative of District 19, into Putnam County, Tennessee, and adjacent counties to carry on an organization campaign at all mines not having a contract with defendant.

5. These men representing the defendant succeeded in organizing the workers in several mines and spent much of their time in and around Monterey, which was only two miles from the mine of plaintiff, in an effort to organize plaintiff's employees.

6. Sometime in late December 1947 the defendant, having failed to recruit the majority of plaintiff's employees, deter-

mined to close down plaintiff's mine by force. Through its representatives in the area and with the aid of many of its members generally in that part of Tennessee and Kentucky, defendant conspired to go on the property of plaintiff in force and in large numbers on January 12, 1948. In furtherance of such conspiracy, approximately 200 members of defendant met at the town of Sparta, Tennessee, about 22 miles from the mine of plaintiff, on the morning of January 12, 1948, and formed a motorcade from there to plaintiff's property, arriving in a body at about 2:30 P.M., just as the night and day shifts were changing.

7. Defendant, acting through its representatives and members, blockaded plaintiff's private road and placed guards at a point between the intersection of this road with the public highway and the mine, and would not allow customers to enter the property. These 200 men, some of whom were armed, intercepted plaintiff's employees and by persuasion and threats of bodily harm to them and their families, sought to get them to join the United Mine Workers of America.

8. The mob crowded into, in front of, and around the commissary, where J. W. Ridings, Hugh Brown and Howard Madewell made speeches from the bed of a truck backed up in front of the commissary. In these speeches, they told those assembled, including the employees of the plaintiff, both the night and day shifts, 169 in number, among other things, that the plaintiff's mine would not run another day unless the company signed a contract with the union.

9. Upon arriving at plaintiff's mine on January 12, 1948, Ernest (Spooner) Stultz, a representative of District 19 of defendant, and Howard Madewell, president of the United Mine Workers Union Local at Wilder, Tennessee, who were in the first car of some 75 cars in the motorcade, told Manuel Powell, a supervisory employee of plaintiff, that they had come to shut down the mine and that it would stay closed until the company signed a contract with the union.

10. As a result of the action of the mob in trespassing upon plaintiff's property, and threatening its employees and its officers, the night shift workers did not enter the mine that night, and on the following day only 8 to 12 men of the normal

crew of approximately 160 men reported for work. Plaintiff was unable to operate the mine with this small number of men, and although it kept the mine in operable condition by the use of supervisory employees, it was unable to recruit a sufficient force of workers to resume mining.

11. The purpose of defendant in organizing and directing the march on the plaintiff's mine was to close its operation by force and to keep it closed until plaintiff signed a labor contract with defendant.

12. Defendant did not represent a majority of the employees of plaintiff, and yet on January 9, 1948, just three days before the unlawful march on the mine, J. W. Ridings and Hugh Brown, International Representatives of defendant, called upon the president of plaintiff, W. T. Ray, at his home, and told him again that the United Mine Workers of America represented a majority of the employees of the plaintiff, and that they wanted to talk to him about a collective bargaining agreement or contract. No contract was presented. However, Ray told these International Representatives that if the employees of plaintiff wanted the United Mine Workers of America to represent them he would be glad to discuss the matter with the Union representatives at any time.

13. Plaintiff was given no advance notice of defendant's purpose to march a mob of men on its mine and it was completely surprised thereby.

14. The only meeting between representatives of the defendant and the management of plaintiff took place on January 9, 1948. Prior to that time no meetings were requested by the defendant, and thereafter, following the unlawful closing of plaintiff's mine by defendant, no meetings were held or requested.

15. On January 13, 1948, the day after the mob had come to the mine and closed it, J. W. Ridings, International Representative, left Tennessee and went to Virginia, and did not return for a period of two weeks. W. T. Ray, the president of plaintiff, stayed at the mine for nine days after January 12, 1948, even though his life had been threatened, and then went to Florida where he remained until March 12, 1948.

16. Although the Union was furnished with his Florida address, no representative of the defendant got in touch with him. Upon his return to Monterey in March, the defendant still made no effort to meet with him or discuss the matter, yet J. W. Ridings knew that he was in Monterey. Mr. Ray then returned to Florida, where he stayed for two weeks before again returning to Monterey.

17. The plaintiff, through its officers, on account of the apparent animosity exhibited by the defendant toward W. T. Ray individually, decided to set up a new company to operate the mine and deliver the coal to plaintiff in railroad cars or on trucks at the mouth of the mine. In furtherance of this plan, the Tennessee Coal Company was incorporated under the laws of Tennessee, and a contract was entered into between the Tennessee Coal Company and the plaintiff by the terms of which the Tennessee Coal Company was to use the equipment of plaintiff to mine the coal and deliver it on railroad cars or on trucks at the mouth of the mine to plaintiff. Tennessee Coal Company was to be paid by plaintiff the actual cost of mining the coal plus 10 cents per ton. The coal belonged to plaintiff, both in the ground and at all times. The Tennessee Coal Company at no time had any interest in the coal itself, but only the contract right to mine and produce the coal. The plaintiff sold the coal, billed the same, and all proceeds from the sale of coal went to the plaintiff.

18. This plan was adopted by plaintiff in an effort to have the mine operate, and to reduce the damage suffered by plaintiff on account of its mine being closed. Plaintiff rendered aid and assistance to the Tennessee Coal Company in its efforts to mine and produce coal from the mine, and also the plaintiff paid certain salaries to some of the administrative officers and employees of the Tennessee Coal Company in addition to the contract price provided for.

19. Plaintiff, when its mine was first opened and it had begun to produce coal for the market, did not have a railroad to the mine and it was limited to truck sales and deliveries in the movement of coal. This continued until a railroad was built to the mine about two years prior to January 12, 1948. The plaintiff had built up and had a very unusual truck trade for the

movement and disposition of its coal, and a large portion of the coal produced by plaintiff from the mine was sold and transported by truck even after the railroad was completed to the mine.

20. On January 12, 1948, the plaintiff had in excess of 500 truck customers of different truck owners scattered over a large area in Tennessee and Kentucky; and there were in excess of 100 trucks at the mine for coal on January 12, 1948.

21. There were some trucks which went to the mine on January 12, 1948, for coal, which were forced to leave empty because they were prevented by the mob assembled by the defendant at the mine on that day from entering the property.

22. Trucks approaching the mine for coal were met on a private road which was blocked by representatives of the defendant, some of whom were armed with guns; and the truck drivers were told by the members of the United Mine Workers of America to "get to hell out of there", and not to come back until the management of the company had signed a contract.

23. One truck was at the bin being loaded with coal when the crowd arrived. Some of the members of the mob climbed upon the running board of the truck and told the driver that that would be the last load of coal that would come away from the mine until the union contract was signed by the management.

24. Also a short while thereafter, Ernest (Spooner) Stultz went to a coal dealer in Crossville, Tennessee, who had two trucks hauling from this mine up to January 12, 1948, and threatened to blow up his place of business if he even sold the coal that came from the plaintiff's mine.

25. The Court finds that the drivers and owners of the 500 or more trucks that had been doing business with the plaintiff at the mine were placed in such fear of bodily harm that they did not return to the mine for coal until a contract was signed by the management with defendant in July 1948.

26. On June 23, 1948, a portion of the railroad track running from the main line of the Tennessee Central Railroad to the plaintiff's mine was destroyed by a dynamite explosion. This

act placed the employees of the Tennessee Central Railroad in fear of great bodily harm and caused them to refuse to transport coal from the plaintiff's mine.

27. The evidence concerning the dynamiting of the railroad track on plaintiff's property shows that members of the United Mine Workers of America had possessed, handled, and transported dynamite on the same night the railroad track was blown up near to the point where the dynamiting took place.

28. Two of the members of the Union charged with this offense were arrested and were placed in jail at Cookeville, the county seat of Putnam County. On several occasions while they were in jail, Mr. Bell, an International Representative of the United Mine Workers of America, visited them and carried them cigarettes and things to eat; and on the day that the contract between the Tennessee Coal Company and the defendant was executed, on July 13, 1948, a request was made to the operating company by J. W. Ridings, a member of the International Board, that the prosecution of these two members of its union be dropped and not further pressed. The request was granted by the operating company and the prosecution was dropped. From all of the circumstances in the case it is a reasonable conclusion that the defendant is responsible for the dynamiting of the Tennessee Central Railroad track.

29. Tennessee Central Railroad Company, due to the acts and conduct above set out which placed its employees in such fear as to refuse to place cars at plaintiff's mine, did thereafter fail and refuse to place railroad cars at the mine and refused to handle or transport any coal, the product of plaintiff, and ceased to do business with the plaintiff for the period from June 23, 1948, to July 14, 1948.

30. The defendant, through its members, called a meeting of members of various locals in the area to convene at Monterey before daylight on the morning of July 2, 1948, to again march on plaintiff's mine and again force its closing.

31. A large number of the members of the said locals did meet at Monterey before daylight that morning but abandoned the plan to march on the mine after learning that it would not

open on that day. However, 15 or 20 of the members who had attended the meeting intercepted three employees of the Tennessee Coal Company while they were on their way to the mine, forced them to get out of their car, drew pistols on them, cursed and abused them with vile epithets, called them "scabs", and told them that their days operating in the mine without a union were ended and for them to tell the same thing to the other men working at the mine. The Union members who thus accosted the employees of the Tennessee Coal Company were led by one Willard W. Clemons who had assisted the defendant in its campaign of organizing the employees of other mines in the area.

32. That during the time between January 12, 1948, when the mine was closed, and July 13, 1948, when the contract with the defendant and the management of the operating company was executed, the defendant made arrangements with a large number of merchants in the area to supply the former employees of plaintiff who had refused to return to the mine for work, with groceries and other merchandise, and a large number of the non-working employees of the plaintiff took advantage of this offer and procured from these merchants groceries and other merchandise which were later paid for by the defendant.

33. The amount of money thus paid by the defendant to and for these employees of plaintiff who refused to work aggregated a large sum, probably well in excess of $70,000.00, and the Court further finds that this money was paid by the defendant for the benefit of such employees of plaintiff to keep them from returning to work for plaintiff.

34. The Constitution of the defendant prohibited the use of its funds for the payment of any sick benefit or damage of any kind to a member, and this prohibition in the constitution was in effect during the whole of the year 1948, and yet the defendant paid the sum of $5,000.00 out of its funds to Willard W. Clemons who had been very active in aiding and assisting defendant in its activities in connection with this mine. This payment was made to Clemons because of injuries sustained by him growing out of the incident above referred to on July 2, 1948, Clemons a few days after said incident having been

shot by a brother of one of the three men intercepted on their way to the mine. This payment was made by the defendant some two years later as a result of a letter written by Clemons to John L. Lewis, President of the defendant. The letter was not introduced in evidence but Clemons testified that he wrote it and that in the letter he advised President Lewis of his activities in organizing the plaintiff's and other mines, about his holding up the man on the way to the mine, and about his being shot a few days later. The payment check of $5,000.00 was signed by John L. Lewis as president of the defendant union and was delivered to Clemons by J. W. Ridings, an International Representative of the defendant and a member of its International Board.

35. The defendant on January 1, 1957, had $20,976,046.76 in cash and bonds.

36. The defendant in closing the plaintiff's mine and in keeping it closed, by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly and with the intent to damage the plaintiff's business.

37. The mining conditions in plaintiff's mine on January 12, 1948, were good, with an unusual vein of coal averaging 5½ feet in thickness. Working conditions in the mine were good. The plaintiff had been developing the mine and increasing the output, and it was on January 12, 1948, and had been for some time prior thereto, producing over 1,000 tons of coal per working day, and the prospects for increase in output were good.

38. That the plaintiff had mined and sold during the year 1947, 217,179.77 tons of coal from the mine, about one-third of which was transported by truck and the remainder by railroad. At the end of the year 1947, the plaintiff had made a net profit on the business for the year of $374,149.17.

39. The plaintiff had a new contract, effective January 1, 1948, and continuing through 1948 and longer, with the Tennessee Valley Authority for a large quantity of coal to be shipped daily. This contract only covered sales of the fines or slack, which was the lowest price coal produced in the mine, and under the contract was to pay plaintiff $5.00 per ton. f. o. b.

mine. The truck coal of the mine was being sold on January 12, 1948, and just prior thereto at an average price of $5.91 per ton at the mine, and the price of coal that prevailed on January 12, 1948, continued to increase through the whole of that year. The average price for all truck coal sold from the mine during the year 1948 was $7.55 per ton.

40. The plaintiff's mine was operated nine days between January 1 and January 12, 1948, and this coal was sold at a net profit to plaintiff for the nine days in the total amount of $30,109.71, which was an average of $3.13 per ton.

41. On the whole record and in the light of the entire evidence, the Court finds that the unlawful conduct of the defendant in closing plaintiff's mine by force of a large mob, by threats, by acts of violence and other wrongful means, directly caused the plaintiff to suffer damages to its business for the year 1948, principally for the first half of that year. Considering the volume of business and profits for the year 1947, the plaintiff's prospects for increased business and lower costs in 1948, the contracts which the plaintiff had, the general conditions which prevailed in the industry, and the entire record, the Court is of the opinion and finds that a fair amount to compensate the plaintiff for its loss on account of the unlawful conduct of the defendant is the sum of $300,000.00.

CONCLUSIONS OF LAW

1. On the basis of the pleadings and the entire evidence, the plaintiff's claim of secondary boycott under 29 U.S.C.A., Section 187, raises or presents a substantial federal question, and consequently the Court has jurisdiction to adjudicate such claim.

2. The material and operative facts supporting the plaintiff's federal claim of secondary boycott are substantially the same as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business.

3. The claim of secondary boycott and unlawful conspiracy are not separate causes of action but are merely different grounds to support a single cause of action, the cause of action being the violation by the defendant of the plaintiff's right to be free from wrongful interference with its business.

4. By reason of Conclusions 1, 2 and 3, above, the Court has jurisdiction of the non-federal claim of unlawful conspiracy to injure the plaintiff's business, under the doctrine of Hurn v. Oursler, 289 U. S. 238, 77 L. Ed. 1148. See also American Fidelity and Casualty Co. v. Owensboro Milling Co., 6 Cir, 222 F. 2d 109; Wertanen v. Welduction Corp., Dist. Court, Eastern Dist. of Michigan, 151 F. Supp. 440.

5. The acts and conduct of the defendant as set forth in the Findings of Fact above constitute an unlawful interference with the plaintiff's business, in violation of the plaintiff's rights under the common law obtaining in Tennessee, thereby entitling the plaintiff to recover damages proximately resulting therefrom. The means employed by the defendant to accomplish its purpose were improper and unlawful, consisting of harassment, violence and threats of violence against the plaintiff, its employees, customers, and other persons doing business with it. The effect of such conduct was to drastically interfere with and curtail production of coal at the plaintiff's mine during the year 1948. Brumley v. Chattanooga Speedway, 136 Tenn. 534; Shell Oil Co. v. State Tire & Oil Co., 6 Cir. 126 F. 2d 971; United States Construction Workers v. Laburnum Construction Corp., 347 U. S. 656, 98 L. Ed. 1025; Restatement of the Law of Torts, Vol. 4, Secs. 775, 779, 798 and 799.

6. The defendant is responsible for the acts and conduct of its agents, servants and representatives, in accordance with the general rules governing the relationship of master and servant or principal and agent. In this case the defendant is clearly shown to have been directly responsible for the conduct which brought about the wrongful closing of the plaintiff's mine and wrongful interference with its business to such extent as to make the defendant legally liable therefor. Cf. United Mine Workers of America v. Patton, 4 Cir, 211 F. 2d 742.

7. The plaintiff's cause of action is governed by the Tennessee ten-year and not the three-year statute of limitations and is, therefore, not barred. City of Atlanta v. Chattanooga Foundry and Pipe Works, et al., 6 Cir, 127 Fed. Rep. 23; affirmed in Chattanooga Foundry and Pipe Works v. City of Atlanta, 203 U. S. 390, 51 L. Ed. 241. The decision of the Supreme Court of Tennessee in Sanford-Day Iron Works v. Foundry and

Machine Company, 136 Tenn. 437, does not construe the Tennessee three-year statute of limitations but the statute pertaining to the jurisdiction of the Chancery Court, and cannot be regarded as disapproving by implication the long-standing decision in City of Atlanta v. Chattanooga Foundry and Pipe Works, et al, supra.

8. The plaintiff is entitled to recover compensatory damages against the defendant in the amount of $300,000.00.

9. By reason of the wilful and malicious conduct of the defendant in closing the plaintiff's mine and interfering with its business, the Court is of the opinion that the plaintiff is entitled to recover, in addition, punitive damages in the amount of $100,000.00.

10. The plaintiff is not entitled to recover its attorneys' fees against the defendant.

11. A form of judgment will be submitted to the Court in *acordance* with the foregoing findings and conclusions, taxing the costs of the action against the defendant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil Action No. 1821

MEADOW CREEK COAL COMPANY, *Plaintiff*

v.

UNITED MINE WORKERS OF AMERICA, *Defendant*

Final Judgment

The above entitled cause came on for trial before the Court, sitting without a jury, and the Court having heard all of the evidence, the argument of counsel and having fully considered the same, together with the briefs submitted by the respective parties, has filed its findings of fact and conclusions of law and based upon such findings of fact and conclusions of law doth adjudge and decree that the plaintiff, Meadow Creek Coal Company, is entitled to have and recover of the defendant, United Mine Workers of America, compensatory damages in the sum of Three Hundred Thousand ($300,000.00) Dollars and also to have and recover of said defendant, United Mine Workers of America, punitive damages in the additional amount of One Hundred Thousand ($100,000.00) Dollars.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that the plaintiff, Meadow Creek Coal Company, have and recover of the defendant, United Mine Workers of America, the aforesaid total sum of Four Hundred Thousand ($400,000.00) Dollars, together with all the costs of the cause, for all of which execution will issue if necessary.

APPENDIX II

No. 13,470

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED MINE WORKERS OF AMERICA, *Appellant*,

v.

MEADOW CREEK COAL COMPANY, INC., *Appellee*.

Appeal from the United States District Court for the Middle District of Tennessee.

Decided January 21, 1959

Before MARTIN and MILLER, Circuit Judges; JONES, District Judge.

MARTIN, Circuit Judge. United Mine Workers of America (an unincorporated labor union or association) has appealed from a judgment against it in favor of Meadow Creek Coal Company, Inc. (a Tennessee corporation), entered by the United States District Court for the Middle District of Tennessee after a lengthy trial without the intervention of a jury. The award consisted of $300,000 compensatory damages and $100,000 punitive damages.

The district court rested its jurisdiction upon the pleadings and upon the entire evidence, for the reason that the coal company's claim of a secondary boycott as proscribed under section 187 of Title 29, U. S. C. A. [Labor Management Relations Act], presents a federal question. The judgment of the court was based upon forty-one separate findings of fact—all supported by substantial evidence and not clearly erroneous—and upon its conclusions of law. We shall undertake first to recite in narrative form the fact findings of the district court and then discuss its conclusions of law in the light of the main points made by the appellant.

The United Mine Workers of America, composed of a membership of over 300,000 with headquarters in Washington, D. C., has district and local offices throughout the United States and in Canada. It functions under a written constitution, providing for a president, a vice-president, and a secretary-treasurer. Its affairs are under the control of these officers and an international board whose members are elected from various districts in the United States. The international union collects monthly dues from its members at the rate of $4.25 each, remitted to the Washington office. Of this amount, $2.25 per member, per month, is retained at the international headquarters in Washington and $2.00 of each members dues each month is returned to the district from which the collection is made, to be divided between the districts and the local unions.

The international union has virtually all the rights and powers vested in corporations, including among others the right to sue and be sued in its own name, the right to adopt by-laws, to appoint representatives, agents and other employees, and the right to own and maintain property. The individual members are not liable individually for the debts and obligations of the organization, which, on January 1, 1957, possessed nearly $21,000,000 in cash and bonds.

The appellee coal company, organized in 1935, was actively engaged in mining and marketing coal in Putnam County, Tennessee. In 1944, at the instance of representatives of appellant, a consent election under supervision of the National Labor Relations Board was held, with the result that only one-third of the employees of the appellee company cast votes in favor of appellant as bargaining agent.

In the latter part of 1946, appellant sent into Putnam County, Tennessee, four organizers to campaign for the organization of all mines in that vicinity which did not have bargaining agreements with the international union. They were successful in organizing workers in several mines and passed much time in and around Monterey, Tennessee, which was located only two miles from the mine of the appellee company. They stayed there for the purpose of organizing Meadow Creek's employees, but failed to interest a majority of them.

As found by the district court, appellant determined in the latter part of December, 1947, to close down the appellee's mine by force; and, through its representatives in the area and with the aid of many of its members in that region of Tennessee and Kentucky, conspired to go in force upon the property of the appellee. In furtherance of this conspiracy, some 200 members of the United Mine Workers of America met on the morning of January 12, 1948, at Sparta, Tennessee, which is located about 22 miles from the mine of appellee. They formed a motorcade to the Meadow Creek Mine and arrived there in a body around 2:30 in the afternoon. The night and day shifts were changing. The mob blockaded appellee's private road and stationed guards between the intersection of that road with the public highway and the mine. No customers were allowed to enter the property of appellee. The mob, some of whom were armed, intercepted employees of the appellee company and, by persuasion and threats of bodily harm to them and their families if they did not do so, urged them to join the United Mine Workers of America.

Prior to this assembly there had been no labor trouble at appellee's mine. Including both night and day shifts, appellee had 169 employees on January 12, 1948—the date the mob gathered at the mine. A truck was backed up in front of the commissary and the mob crowded around it. From the bed of the truck, J. W. Ridings, a member of appellant's international board and the leader of the invasion; Hugh Brown, one of appellant's representatives; and Howard Madewell, President of the United Mine Workers Union at Wilder, Tennessee, addressed the assembly, including the mine workers. These speakers boldly asserted that appellee's mine would not be run another day unless the company sighed a contract with the union.

When they arrived at the mine, Madewell (President of Local at Wilder) and Stultz (representative of appellant's District 19), who were in the first of approximately seventy-five cars constituting the motorcade, told Powell (a supervisory employee of appellee) that they had come to shut down the mine and that it would stay closed until the company signed a contract with the union. The district court found that such was the obvious purpose of appellant in organizing and directing the march on the mine of appellee.

In consequence of the mob's action, the night-shift workers would not enter the mine that night and, on the following day, only eight or ten men reported for work. This was too small a force for operation of the mine; and, although the mine was kept in operable condition by the use of supervisory employees, the company was unable to recruit sufficient workers for the resumption of mining.

Only three days before the unlawful march on the mine, Ridings and Brown had called upon appellee's president (W. T. Ray) at his home. They told him that the United Mine Workers of America represented a majority of his employees and that they wanted to talk with him about a collective bargaining agreement. But they did not in fact represent the majority of the employees at that time and they presented no proposed contract. Nevertheless, President Ray told them that if appellee's employees wanted the United Mine Workers of America to represent them, he would be glad to discuss the matter with union representatives at any time. This was the only meeting, either requested or held, between the representatives of the union and the management of the company before the march on the mine on January 12, 1948. Appellee was given no advance notice of this *tour de force*.

On the day following (January 13, 1948), the leader, Ridings (member of the international board of appellant) left Tennessee and did not return for two weeks. President Ray—even though his life had been threatened—stayed at the mine until January 31 when he went to Florida, as was his custom, and remained there for about six weeks. The union was furnished his Florida address, but none of the representatives communicated with him. Upon his return to Monterey on March 12, 1948, no effort was made to arrange a meeting with him, although Ridings knew that he was in Monterey. President Ray went back to Florida and remained there for two weeks before coming back to Tennessee.

On account of the apparent animosity of the appellant toward appellee's president, the appellee company decided to organize a new company to operate the mine and deliver the coal to appellee, in railroad cars or trucks, at the mouth of the mine. To consummate this, a corporation known as the "Tennessee Coal

Company" was organized under the laws of Tennessee. This new company entered into a contract with Meadow Creek Coal Company under the terms of which the new corporation would use the equipment of appellee to mine the coal and deliver it to appellee, as planned. Appellee contracted to pay the Tennessee Coal Company the actual cost of mining the coal, plus *ten cents* per ton.

It was agreed that the coal, both in the ground and at all times, belonged to appellee; and that the Tennessee Coal Company had only the right to mine and produce it. Appellee sold the coal and received all proceeds from sales. This plan of operation was adopted in an effort to reduce the damage suffered by appellee as the result of its mine being closed. Appellee rendered aid to the Tennessee Coal Company in its mining and production operation and paid salaries to some of its administrative officers and employees.

At the time Meadow Creek's mine was first opened for production, appellee had no railroad to the mine and was limited to truck sales and deliveries in the movement of its coal. This situation continued until a railroad was built to the mine some two years prior to the events of January 12, 1948. Of necessity, appellee had built up a very unusual truck trade for the movement and distribution of its product, a large portion of which was sold and transported by truck even after the railroad to the mine had been completed. Indeed, on January 12, 1948, appellee had more than 500 truck customers scattered over a wide area of Tennessee and Kentucky. There were more than a hundred trucks at the mine on the critical date. Some of those that went to the mine for coal on that date (January 12) were forced to return empty because they were prevented by the assembled mob from entering upon appellee's property.

The district court found that trucks approaching the mine for coal were met on the private road, blocked by union representatives, some of whom were armed with guns; and the truck drivers were told by the members of the United Mine Workers of America to "get the hell out of there" and not to come back until the management of the company had signed a contract. One truck was being loaded with coal at the bin when the mob arrived. Some of the mobsters climbed upon the running board

of the truck and told the driver that his would be the last load of coal to leave the mine until a union contract was signed by the management.

Stultz, heretofore identified, went to a coal dealer in Crossville, Tennessee, who had been hauling coal from the mine in two trucks prior to January 12, and threatened to blow up his place of business if he even sold the coal which had come from the mine of appellee. The district court found that the drivers or owners of 500 or more trucks, used in doing business with appellee, had been placed in such fear of bodily harm that they did not return to the mine for coal until a contract had been signed by the management with the union in July of 1948.

Another consequential incident was related by the district court in its findings: On June 23, 1948, a portion of the railroad track running from the main line of the Tennessee Central Railroad to appellee's mine was destroyed by a dynamite explosion. This act placed employees of the railroad in fear of great bodily harm and caused them to refuse to transport coal from the mine. The evidence shows that, at a place near where the explosion occurred, certain members of the United Mine Workers of America had possessed, handled and transported dynamite on the same night on which the railroad tracks had been blown up.

While two members of the union charged with the dynamiting of the railroad were in jail at Cookeville, a representative of the United Mine Workers of America visited them on several occasions and brought them food and cigarettes. On the date of the execution of the contract between appellant and the Tennessee Coal Company, Ridings requested that company to drop the prosecution of the two union members charged with blowing up the tracks. The request was granted and no prosecution ensued. The district court found that it was reasonable to conclude from all the circumstances that the appellant was responsible for the dynamiting of the Tennessee Central's tracks.

Because of the foregoing acts and the conduct of appellant's members, employees of the railroad became fearful to the extent that they refused to place cars at appellee's mine. In consequence, the railroad company, itself, refused to furnish rail-

road cars at the mine, or to handle or transport any of appellee's coal, from the date of the dynamiting until July 14, 1948—the day following execution of the contract between the union and the Tennessee Coal Company.

Another relevant incident is narrated in the findings of fact of the district court. Members of the United Mine Workers of America had called a meeting of various locals in the area to convene at Monterey before daylight on the morning of July 2, 1948. The purpose of the meeting was to march again on the mine and force its closing. Numerous members of the local did assemble at Monterey; but they abandoned the planned march on the mine after learning that it was not open on that date. Nevertheless, fifteen or twenty members of the union who had attended the meeting intercepted three employees of the Tennessee Coal Company who were on their way to the mine, forced them to get out of their automobile, drew pistols on them, abused them and cursed them with vile epithets, called them "scabs" and told them that their days of operating the mine without a union were ended. They then instructed the employees to inform the other men working at the mine of what the employees had been told. These union members were led by Clemons, who had assisted in organizing (for appellant) the employees of other mines in the area. A few days later, Clemons was shot by a brother of one of the three men whom he had intercepted. Some two years later, Clemons wrote a letter to the president of appellant U. M. W. A. This letter was not introduced in evidence; but Clemons testified that, in the letter, he advised the union president of his organizing activities and of the occurrences leading to his being shot. He later received a check for $5,000, signed by appellant's president and delivered to him by Ridings—the central character in the union's activities in this case.

During the time between January 12, 1948, when the mine was closed, and July 13, 1948, when appellant and the management of the operating company entered into a contract, appellant arranged with numerous merchants in the area to supply groceries and other merchandise to former employees of the appellee who had refused to return to the mine for work. The cost to appellant amounted to more than $70,000, which

the court found was supplied to appellee's employees to keep them from returning to work.

The district court found that, in closing appellee's mine and in keeping it closed by force and threats of bodily harm and acts of violence, and in conspiring with its members to accomplish the same purpose, appellant acted willfully and wantonly and with intent to damage appellee's business.

Relative to the damage feature of the case, the district court found that the mining conditions in appellee's mine on January 12, 1948, were good, there being an unusual vein of coal averaging five and one-half feet in thickness; that working conditions in the mine were also good; that appellee had been developing the mine and increasing its output; and that on and sometime prior to January 12, 1948, the mine was producing more than 1000 tons of coal per working day, with good prospects for increasing output. It was found further that the appellee (during 1947) had mined and sold 217,179.77 tons of coal, about one-third of which had been transported by truck and the rest by railroad. Appellee's net profit on its business for the year 1947 had been $374,149.17.

Moreover, appellee had a new contract, effective January, 1948, and continuing through 1948 and longer, with the Tennessee Valley Authority for daily shipments of a large quantity of coal. This contract covered only the lowest price coal produced in the mine; and, under the contract, appellee was to receive $5.00 per ton, f. o. b. the mine. Just prior to January 12, 1948, trucked coal was selling at an average price of $5.91 per ton at the mine, with a price increase through 1948, the average price of all trucked coal sold from the mine during that year being $7.55 per ton. In the nine days of operation between January 1 and January 12 of 1948, the net profit to appellee from the mine amounted to $30,109.71, making a yield of $3.13 per ton average.

In its final finding (No. 41), the district court said: "On the whole record and in the light of the entire evidence, the Court finds that the unlawful conduct of the defendant in closing plaintiff's mine by force of a large mob, by threats, by acts of violence and other wrongful means, directly caused the plain-

tiff to suffer damages to its business for the year 1948, principally for the first half of that year. Considering the volume of business and profits for the year 1947, the plaintiff's prospects for increased business and lower costs in 1948, the contracts which the plaintiff had, the general conditions which prevailed in the industry, and the entire record, the Court is of the opinion and finds that a fair amount to compensate the plaintiff for its loss on account of the unlawful conduct of the defendant is the sum of $300,000."

In addition to compensatory damages, the court awarded the appellee $100,000 punitive damages.

Together with its findings of fact, the district court promulgated conclusions of law. Before discussing these conclusions, we shall reply to the first two points made by the United Mine Workers of America on this appeal. These points relate to service of process.

First, appellant denies that service of process on a regional director of District 50, United Mine Workers of America, was valid service on an "agent" of the appellant labor union "in his capacity as such", within the meaning of section 301 (d) of the Labor Management Relations Act of 1947 [29 U. S. C. A., 185 (b)]. That argument has been rejected by this court in *Claycraft Co.* v. *United Mine Workers of America*, 204 F. (2d) 600 (C. A. 6). But, even if the *Claycraft* case could be distinguished in principle, which we think it cannot be, we are of opinion that binding service of process upon appellant was made by service upon the Secretary of State of Tennessee, pursuant to section 8679.1 of the Supplement to Code of Tennessee of 1950, which provides that, where an unincorporated association or organization fails to appoint a process agent pursuant to the statute, process may be served upon the Secretary of State of Tennessee. See *McDaniel* v. *Textile Workers Union of America* (Tenn. App.), 254 S. W. (2d) 11.

The next point on appeal urged strongly by appellant goes to the *jurisdiction* of the United States District Court. Appellant insists that, in this case in which jurisdiction of the district court was grounded upon section 303 of the Labor Management Relations Act of 1947 [29 U. S. C. A. 187], the trial court, having

in effect held that there was no violation of the federal Act, had no jurisdiction to determine and decide the common law or non-federal cause of action.

In its first four conclusions of law, the court held: "1. On the basis of the pleadings and the entire evidence, the plaintiff's claim of secondary boycott under 29 U. S. C. A., section 187, raises or presents a substantial federal question, and consequently the court has jurisdiction to adjudicate such claim. 2. The material and operative facts supporting the plaintiff's federal claim of secondary boycott are substantially the same as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business. 3. The claim of secondary boycott and unlawful conspiracy are not separate causes of action but are merely different grounds to support a single cause of action, the cause of action being the violation by the defendant of the plaintiff's right to be free from wrongful interference with its business. 4. By reason of Conclusions 1, 2 and 3, above, the Court has jurisdiction of the non-federal claim of unlawful conspiracy to injure the plaintiff's business, under the doctrine of *Hurn* v. *Oursler*, 289 U. S. 238, 77 L. Ed. 1148. See also *American Fidelity and Casualty Co.* v. *Owensboro Milling Co.*, 6 Cir., 222 F. (2d) 109; *Wertanen* v. *Welduction Corp.*, Dist. Court, Eastern District of Michigan, 151 F. Supp. 440." Cf. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656.

We are in accord with the conclusion of the district court on the question of jurisdiction. The scholarly opinion of Mr. Justice Sutherland in *Hurn* v. *Oursler*, 289 U. S. 238, would appear to be determinative of the issue. There, a suit was filed in the United States District Court seeking redress for copyright infringement which raised a substantial federal question and sought to obtain relief, as well, upon the ground that identical acts constituting the alleged infringement were also unfair competition under the state law. It was held by the Supreme Court that the federal question raised by the pleadings gave the court jurisdiction; and that, although the federal claim was rejected on the merits, the district court still possessed jurisdiction to decide the claim of unfair competition on its merits. *Siler* v. *Louisville and Nashville R. Co.*, 213 U. S. 175, 191, was

pointed out as having held that, where the trial court acquired jurisdiction by reason of the federal questions involved, the court "had the right to decide all the questions in the case, even though it decided the federal questions adversely to the party raising them, or even if it omitted to decide them at all, but decided the case on local or state questions only." *Lincoln Gas Co.* v. *Lincoln*, 250 U. S. 256, was also cited with the statement that there were many other cases where the rule had been stated and restated in substantially the same way. Numerous citations followed [289 U. S. 244]. See also another opinion of Mr. Justice Sutherland in *Baltimore Steamship Co.* v. *Phillips*, 274 U. S. 316; and the opinion of this court in *American Fidelity & Casualty Company* v. *Owensboro Milling Company*. 222 F. (2d) 109 (C. A. 6), cited *supra*.

In his conclusions of law in the case at bar, United States District Judge Miller cited also *Wertanen* v. *Welduction Corp.*, 151 F. Supp. 440, in which District Judge Levin said: "According to *Hurn* v. *Oursler*, 1933, 289 U. S. 238, 53 S. Ct. 586, 589, 77 L. Ed. 1148, when a case presents a substantial federal question the Court has jurisdiction to dispose of all grounds, either federal or state, which are 'in support of a single cause of action'."

Upon the facts found by the district court, as outlined at length in the early portion of this opinion, we think that this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action.

In its fifth conclusion, the trial judge stated that the acts and conduct of the defendant as set forth in the findings constituted unlawful interference with the plaintiff's business in violation of the latter's rights under the common law of Tennessee; and that this entitled the plaintiff to recover damages proximately resulting from such interference. The court further asserted that the means employed by the defendant to accomplish its purpose were improper and unlawful. These means consisted of harassment, violence and threats of violence against the plaintiff, its employees, its customers and all persons doing business with the plaintiff. The effect of defendant's conduct

was said to have interfered drastically with, and to have curtailed production of coal at plaintiff's mine during 1948.

In its next conclusion, the district court held the defendant responsible for the acts and conduct of its agents, servants and representatives, in accordance with the general principles of the law of master and servant, or principal and agent. It was concluded that the defendant was shown clearly to have been directly responsible for the conduct which brought about the wrongful closing of plaintiff's mine and the wrongful interference with its business to such extent as to place liability therefor upon the defendant association. We are in accord with these conclusions.

We think, as did the district judge, that the case falls within the principles of the authorities which he cited: *Brumley* v. *Chattanooga Speedway & Motordrome Co.*, 138 Tenn. 534; *Shell Oil Co.* v. *State Tire & Oil Co.*, 126 F. (2d) 971 (C. A. 6); *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656; and *United Mine Workers of America* v. *Patton*, 211 F. (2d) 742 (C. A. 4). Substantially the same definition of civil conspiracy given in the *Brumley* case was stated by the Tennessee Supreme Court in *McKee* v. *Hughes*. 133 Tenn. 455, 459, where it was said: "A 'civil conspiracy' may be defined to be a combination between two or more persons to accomplish by concert of action an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means; the damage caused being the gist of any action."

A study of the opinion in the *Laburnum* case, supra, on account of its similarity in principle and in relevant facts, further demonstrates the correctness of the district court's conclusions. The comprehensive opinion of Judge Parker in *United Mine Workers of America* v. *Patton*, 211 F. (2d) 742 (C. A. 4), makes it clear that, in relation to a case of this character brought pursuant to the Taft-Hartley Act, it was undoubtedly the intention of Congress to apply the common law rule with respect to liability for the acts of an agent. The United States Court of Appeals held that, where a field representative of the international union was engaged in both its own business and that of the dis-

trial union in carrying on organization work, both unions were responsible for acts done by the field representative within the scope and course of his employment.

Appellant contends urgently that the instant action, having been commenced more than three years from its accrual, is barred by the Tennessee three-year statute of limitations (section 28-305, Tennessee Code Annotated). The district court held that the cause of action in controversy is governed by the ten-year (section 28-310, Tennessee Code Annotated) and not the three-year statute of limitations and is, therefore, not barred. The three-year statute [Tennessee Code Annotated, 28-305] reads as follows: "Actions for injuries to personal or real property, actions for the detention or conversion of personal property, civil actions based upon the alleged violation of any federal or state statute creating monetary liability for personal services rendered, or liquidated damages or other recovery therefor, when no other time of limitation is fixed by the statute creating liability, and actions for alienation of affections, shall be commenced within three (3) years from the accruing of the cause of action."

The ten-year statute [Tennessee Code Annotated, 28-310] reads thus: "Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers on their bonds, actions on judgments and decrees of courts of record of this or any other state or government, and all other cases not expressly provided for, shall be commenced within ten (10) years after the cause of action accrued."

The district judge relied upon the authority of *City of Atlanta* v. *Chattanooga Foundry and Pipe Works et al.*, 127 F. 23 (C. A. 6), affirmed in *Chattanooga Foundry and Pipe Works* v. *City of Atlanta*, 203 U. S. 390. It was stated that the decision of the Supreme Court of Tennessee in *Sanford-Day Iron Works* v. *Foundry and Machine Co.*, 138 Tenn. 437, construes, not the Tennessee three-year statute of limitations, but a statute pertaining to the jurisdiction of the chancery court, and cannot be regarded as disapproving by implication the long-standing decision in *City of Atlanta* v. *Chattanooga Foundry and Pipe Works et al.*, *supra*.

The opinion in the *City of Atlanta* case was written by Judge Lurton, who had been Chief Justice of the Tennessee Supreme Court and was appointed from our court to the Supreme Court of the United States. The action was based upon the alleged violation of the Anti-Trust Law of the United States (Act of July 2, 1890, Ch. 647; 26 Stat. 210), providing that "any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any Circuit Court of the United States * * * and shall recover threefold the damages by him sustained." It was held that the action was not one for injury to property within the coverage of section 4470, Shannon's Tennessee Code, and was therefore not barred by the three-year statute and would be barred only by the ten-year statute of limitations.

Judge Lurton said. "That section [the three-year statute] plainly applies only to causes of action arising out of some injury to property, as distinguished from its detention or conversion. Property, either person or real, may be injured or damaged without its being either detained or converted. But whether the cause of action be an injury or damage to the property, or for its taking or detention, the suit must be brought within the same period. This distinction between the two kinds of injury to tangible personal property is of very ancient origin * * *.

"We find in the very carefully selected verbiage of section 4470 a recognition of the two kinds of injury to which tangible property is susceptible—one by a damage which does not affect the possession and the other by a taking or detention which does.

"While the precise question has not been decided by the Supreme Court of Tennessee, we do find an indisposition to give to the section any such broad and indeterminate meaning as would include a suit which does not involve any actual injury to property."

On appeal, the Supreme Court of the United States affirmed the judgment of this court. *Chattanooga Foundry and Pipe Works* v. *City of Atlanta*, 203 U. S. 390, 397, et seq. It was point-

ed out that "there is a sufficiently clear distinction between injuries to property and 'injured in his business or property', the latter being the language of the act of Congress."

Mr. Justice Holmes stated: "The material provisions of the Tennessee Code are as follows: By Article 2769 (Shannon, 4466), all civil actions are to be commenced within the period prescribed, with immaterial exceptances. By Article 2772 (Shannon, 4469), actions, among others, 'for statute penalties, within one year after cause of action accrues'. By 2773 (Shannon, 4470), 'Actions for injuries to personal or real property; actions for the detention or conversion of personal property, within three years from the accruing of the cause of action'. By 2776 (Shannon, 4473), certain actions enumerated, 'and all other cases not expressly provided for, within ten years after the cause of action accrued.' The Circuit Court of Appeals held that the case did not fall within 2772, or 2773, but only within 2776, and therefore was not barred. Although the decision is appealed from, as this question involved the construction of local law we cannot but attribute weight to the opinion of the judge who rendered the judgment, in view of his experience upon the Supreme Court of Tennessee. And although doubts were raised by the argument, we have come to agree with his interpretation in the main." The opinion concluded that "the dragnet at the end, 2776, catches all cases not 'expressly provided for'." The final remark was made that: "On the whole case we agree with the court below."

In the context, it is interesting to observe the similarity in pertinent aspect between the Sherman Anti-Trust Act under interpretation in the *City of Atlanta* case and the Taft-Hartley Act under interpretation here. The former contains this sentence: "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue, etc." The latter (Taft-Hartley) provides: "Whoever shall be injured in his business or property by reason of any violation of Sub-Sec. (a) of this section may sue, etc." Both acts seem plainly to distinguish between injury to a man's business and injury to his property. It seems logical to infer that injury to business or property, being covered in both acts, means that they are separate wrongs; and that the fact that the

three-year statute of limitations applies to *personal property* would make the ten-year statute under its catch-all coverage apply to injury to business. We agree with the conclusion of the district court that the *Sanford-Day Iron Works* case, *supra*, does not disapprove by implication the well established doctrine of the *City of Atlanta* case. The statute relating to jurisdiction of the chancery court was involved in the *Sanford-Day* case. The statute here under consideration was not even involved in the *Sanford-Day* case.

After consideration of cases cited in Judge Lurton's opinion in the *City of Atlanta* case and other Tennessee authorities brought to our attention, we hold the opinion, as did the district judge, that the ten-year statute of limitations of Tennessee and not the three-year statute applies to the present case.

In view of the substantially supported findings of fact of the district court, which have been detailed in the earlier part of this opinion, it would seem unnecessary to labor the point that there appears adequately sufficient evidence in the record to support the findings of the court that appellant set out by violence and threats of violence against appellee, its employees and customers, to accomplish its objective of "organizing" appellee's mine. Such conduct constituted an unlawful interference with appellee's business, in violation of the common law of Tennessee. See *Brumley* v. *Chattanooga Speedway*, 138 Tenn. 534, *supra*. No opinion of the Supreme Court of the United States has recognized the right of a labor organization to use violent means to accomplish the lawful ends of plant organization.

Appellant stresses in its behalf the authority of *United Brotherhood of Carpenters and Joiners of America* v. *United States*, 330 U. S. 395, 403. There, the court stated that the purpose and effect of section 6 of the Norris-LaGuardia Act was to relieve organizations, whether of labor or of capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with

responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration.

The answer is that, in the instant case, the facts as found by the trial judge, based on substantial evidence, are that the operations of Ridings, international board member of appellant, and several of its other international representatives, were definitely either authorized by appellant, or ratified by it after obtaining actual knowledge of the unlawful acts perpetrated. As found by the district court, the purpose of appellant in organizing and directing the march on appellee's mine was, by force and violence, to close its operation until appellee should sign a labor contract with appellant. Indeed, Ridings, who was general director of the activities of the mob of marchers and the other union members who participated in the unlawful acts, was high enough in the hierarchy of the United Mine Workers of America to render that organization liable for the consequences of conduct of its members under his general leadership. Cf. *United Mine Workers* v. *Patton*, 211 F. (2d) 742 (C. A. 4).

In a recent opinion of this court (September 26, 1958), Mr. Justice Stewart (then a member of this court) said that a jury had been properly instructed by the district judge that the unions involved were responsible for the acts of their representatives only if the latter were engaged within the scope of their employment or authority; but that actual authorization of specific acts was unnecessary. [Citing 29 U. S. C. A., §.185 (e).] *John L. Lewis, et al.*, v. *Benedict Coal Corporation*, . . . F. (d) . . . (C. A. 6). This able jurist added: "Moreover, the fact, if it is so, that field representatives of the District lacked actual authority to call strikes is not controlling. These representatives were sent by the District to attempt to settle local disputes at the Benedic Mine. The declarations attributed to Scroggs all took place while he was on these missions. The calling of the strike was clearly one way to 'settle' a labor dispute, although a way not permitted by the agreement. Consequently the jury were amply justified in finding that Scroggs was acting within the scope of his employment when he made the declarations in question. Compare, *United Mine Workers*

v. *Patton*, 211 F. (2d) 742 (4 Cir., 1954), with *Garmeada Coal Co.* v. *International Union*, 122 F. Supp. 512 (E. D. Ky., 1954), aff'd 230 F. (2d) 945 (6 Cir., 1956)."

This court has held, in *United Brick & Clay Workers* v. *Deena Artware*, 198 F. (2d) 637, 642 (C. A. 6), that the court of appeals has no right to set aside findings of fact, either of the jury in an action by the employer against a labor union for damages caused by secondary boycott, or of a trial examiner in a National Labor Relations Board proceeding to enforce its cease and desist order against the employer, though such findings are inconsistent, if they are supported by substantial evidence on the record considered as a whole in each proceeding.

Undoubtedly, there was adequate substantial evidence to support the award of $300,000 compensatory damages for the wrongs and injuries inflicted upon appellee's business by the United Mine Workers of America. We are of opinion, moreover, that it rested within the sound discretion of the district judge to award $100,000 as punitive damages. The conduct of the appellant, through its agents, was of such wilful and malicious character as to justify an award of punitive damages. In its recent opinion in *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), et al.*, v. *Russell*, 356 U. S. 634, 640, 641 (decided May 26, 1958), Mr. Justice Burton, speaking for the Supreme Court, said: "In the *Laburnum* case, *supra*, the union, with intimidation and threats of violence, demanded recognition to which it was not entitled. In that manner, the union prevented the employer from using its regular employees and forced it to abandon a construction contract with a consequent loss of profits. The employer filed a tort action in a Virginia court and received a judgment for about $30,000 compensatory damages, plus $100,000 punitive damages. On petition for certiorari, we upheld the state court's jurisdiction and affirmed its judgment. We assumed that the conduct of the union constituted a violation of § 8 (b) (1) (A) of the Federal Act [National Labor Relations Act]. Nevertheless, we held that the Federal Act did not expressly or impliedly deprive the employer of its common-law right of action in tort for damages."

For the foregoing reasons, the judgment of the district court is affirmed.

JUDGMENT

(Filed January 21, 1959)

Appeal from the United States District Court for the Middle District of Tennessee.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Order Denying Petition For Rehearing

(Filed February 23, 1959)

The petition for rehearing filed by appellant herein is denied; and the suggestion that the case be heard by the court *en banc* is likewise denied. *N.L.R.B.* v. *Cambria Clay Products Co.*, 299 F. (2d) 433 (C. A. 6).

APPENDIX III

Section 12 of H. R. 3020 as found in Legislative History of the Labor Management Relations Act, Vol. 1, pp. 204-207:

"SEC. 12. (a) The following activities when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place; or picketing an employer's place of business in numbers or in a manner otherwise than is reasonably required to give notice of the existence of a labor dispute at such place of business; or picketing or besetting the home of any individual in connection with any labor dispute.

"(2) Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, in any case in which the employees are not involved in a labor dispute with their employer.

"(3) Calling, authorizing, engaging in, or assisting—

"(A) any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott, or any sit-down strike or other concerted interference with an employer's operations conducted by remaining on the employer's premises;

"(B) any strike or other concerted interference with an employer's operations, an object of which is to compel an employer to accede to featherbedding practices;

"(C) any strike or other concerted interference with an employer's operations, an object of which is (i) to compel an employer to recognize for collective bargaining a representative not certified under section 9 as the representative of the employees, or (ii) to remedy practices for which an administrative remedy is available under this Act, or (iii) to compel an employer to violate any law or any regulation, order, or direction issued pursuant to any law.

"(4) Any conspiracy, collusion, or common arrangements between competing employers to fix or agree to terms or proposed terms of employment of their employees, or to subject such terms or proposed terms of employment to common control or approval, not permitted as to their employees, or as to the representatives of their employees, with respect to the collective bargaining, concerted activities, or terms of collective bargains or arrangements of such employees.

"(b) Any person injured in his business, person, or property by an unlawful concerted activity affecting commerce may sue the person or persons responsible therefor in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, and may recover the damages sustained by him as a result of such unlawful concerted activity, together with the costs of the suit, including a reasonable attorney's fee.

"(c) No provision of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall have any application in any action or proceeding in a court of the United States involving any activity defined in this section as unlawful.

"(d) A person who is found to have engaged in any activity herein defined as an unlawful concerted activity shall be subject to deprivation of rights under this Act to the same extent as a person found to have engaged in an unfair labor practice under section 8(b) or 8(c).

"(e) Except as specifically provided in this section, nothing in this Act shall be construed to diminish the right of employees to strike or to engage in other lawful concerted activities. No provision of this Act, and no order of any court issued hereunder, shall be construed to require any individual to perform labor or service without his consent."

APPENDIX IV

Clayton Act

29 U. S. C. 52, 38 Stat. 738: *Statutory restriction of injunctive relief*

No restraining order or injunction shall be granted by any court of the United States, or a judge of the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Norris-LaGuardia Act

29 U. S. C. 104, 47 Stat. 70: *Enumeration of specific acts not subject to restraining orders or injunctions*

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

* * * *

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike, or unemployment benefits or insurance, or other moneys or things of value;

* * * *

29 U. S. C. 106, 47 Stat. 71: *Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents*

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

29 U. S. C. 113, 47 Stat. 73: *Definitions of terms and words used in chapter*

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations

of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

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LABOR MANAGEMENT RELATIONS ACT, 1947

29 U. S. C. 187, 61 Stat. 158: *Boycotts and other unlawful combinations; right to sue; jurisdiction; limitations; damages*

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under sub-chapter II of this chapter.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

29 U.S.C. 185. *Suits by and against labor organizations—Venue, amount, and citizenship*

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(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Tennessee Code Annotated

28-305. *Property tort actions—Statutory liabilities—Alienation of affections.*—Actions for injuries to personal or real property, actions for the detention or conversion of personal

property, civil actions based upon the alleged violation of any federal or state statute creating monetary liability for personal services rendered, or liquidated damages or other recovery therefor, when no other time of limitation is fixed by the statute creating liability, and actions for alienation of affections, shall be commenced within three (3) years from the accruing of the cause of action. [Code, Sec. 1858, Sec. 2773 (deriv. Acts 1715, ch. 27, Sec. 5); Shan., Sec. 4470; Code 1932, Sec. 8598; Acts 1945, ch. 130, Sec. 1; mod. C. Supp. 1950, Sec. 8598].

28-310. *Actions on public officers' and fiduciary bonds—Actions not otherwise covered.* Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers on their bonds, actions on judgments and decrees of courts of record of this or any other state or government, and all other cases not expressly provided for, shall be commenced within ten (10) years after the cause of action accrued. [Code 1858, Sec. 2776; Shan., Sec. 4473; Code 1932, Sec. 8601].

28 U.S.C. 1338, 62 Stat. 931—*Patents, copyrights, trade-marks, and unfair competition*

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trade-mark laws.